IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:08-cr-00493-W

DAVID T. MALBROUGH,)
DI 1 (100)
Plaintiff,)
vs.) ORDER
CONTINENTAL TIRE NORTH AMERICA,)
INC.,)
Defendant.)
)

THE MATTER is before the Court on Defendant's Motion to Dismiss for Insufficient Service of Process pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure (Doc. No. 4). After receiving the motion, the Court issued an order requiring Plaintiff to show cause why this matter should not be dismissed due to his failure to serve Defendant with the Summons and Complaint as required by Federal Rule of Civil Procedure 4(m). (Doc. No. 6). In response to the Show Cause Order, Plaintiff responded by admitting that he had not yet completed service because he was attempting to obtain legal representation and because he was awaiting Defendant's response to correspondence sent by potential counsel for Plaintiff. (Doc. No. 7). Plaintiff further states that he is still in the process of securing legal representation and "weighing [his] options."

The Court finds Plaintiff's explanation sufficient to excuse his failure to serve the Summons and Complaint. Furthermore, because Plaintiff is appearing *pro se*, the Court will give Plaintiff the benefit of every inference and construe his response as a request for an extension of time to complete service of the Summons and Complaint. For good cause shown, pursuant to Rule 4(m), the Court allows Plaintiff no more than forty-five (45) calendar days from the date of this Order to effect

service of process on Defendant. If Plaintiff fails to effect service by Friday, July 17, 2009, then the Court will grant Defendant's motion. **No further extensions of time will be granted unless Plaintiff can show exceptional circumstances.** The Clerk is directed to send a copy of this Order to Plaintiff's address of record.

IT IS SO ORDERED.

Signed: June 2, 2009

Frank D. Whitney

United States District Judge